



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-12065]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG (CSG or the Applicant), Zurich, Switzerland

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of 1986 (the Code). If this proposed exemption is granted, certain entities with specified relationships to Credit Suisse AG (CSAG) and Credit Suisse Securities (Europe) Limited (CSSEL) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14, notwithstanding the judgments of conviction against CSAG and CSSEL, described below.

DATES: If granted, this proposed exemption will be in effect for one year beginning on the date of conviction of Credit Suisse Securities (Europe) Limited in Case Number 1:21-cr-00520-WFK.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by [INSERT DATE 40 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D-12065 via email to e-OED@dol.gov or

online through <https://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210. See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Erin Scott Hesse of the Department at (202) 693-8546. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments:

In light of the current circumstances surrounding the COVID-19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the Federal Register. The Department

may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

WARNING: All comments received will be included in the public record without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but **DO NOT** submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <https://www.regulations.gov> website is an “anonymous access” system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet.

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B

(76 FR 46637, 66644, October 27, 2011).¹ If the proposed exemption is granted, the Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs, as defined below, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption (PTE) 84-14 (PTE 84-14),² notwithstanding the judgment of conviction against Credit Suisse AG (CSAG) and upcoming judgment of conviction against Credit Suisse Securities (Europe) Limited (CSSEL), described below.³

This proposed exemption will be effective for a one-year period beginning on the date a judgment of conviction against CSSEL (the CSSEL Conviction) is entered in the United States District Court for the Eastern District of New York in case number 1:21-cr-00520-WFK, provided that the conditions set out in Section III of the Proposed Exemption are satisfied.

SUMMARY OF FACTS AND REPRESENTATIONS⁴

Credit Suisse Group AG

1. CSG is a publicly-traded corporation headquartered in Zurich, Switzerland. CSG and its affiliates operate in about 50 countries and currently have approximately 48,770 employees, providing services including private banking, investment banking, and

¹ For purposes of this proposed exemption reference to specific provisions of Title I of the ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

² 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010). Section I(g) of PTE 84-14 generally provides that “[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of” certain felonies including a violation of 18 U.S.C. 1349.

³ As described in more detail below, to the extent that any investor believes that it has suffered losses in connection with the impending CSSEL Conviction, Credit Suisse’s resolutions with the U.S. Securities and Exchange Commission (SEC) and Department of Justice (DOJ) provide those potentially damaged investors with two potential avenues through which to receive compensation, should they be able to support their claims with sufficient evidence.

⁴ The Department notes that availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in application D-12065 are true and complete, and accurately describe all material terms of the transaction(s) covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

asset management. As of December 31, 2020, CSG and its consolidated subsidiaries had total balance sheet assets of approximately \$890 billion and \$47 billion, respectively.

2. CSG owns a 100% interest in Credit Suisse AG (CSAG). CSAG operates as a bank, in Switzerland and abroad. Currently, two Credit Suisse asset management affiliates, Credit Suisse Asset Management, LLC (CSAM LLC) and Credit Suisse Asset Management Limited (CSAM Ltd.) (together, the CS Affiliated QPAMs), manage the assets of ERISA-covered plans and IRAs (together, Covered Plans) on a discretionary basis. The CS Affiliated QPAMs also advise or sub-advise pooled funds. These affiliates routinely rely upon PTE 84-14 to provide relief for party in interest investment transactions.

3. CSSEL is headquartered in London, United Kingdom and is indirectly a wholly-owned subsidiary of CSG. CSSEL provides a broad range of financial products and services including global securities sales, trading and execution, prime brokerage and capital markets, with an active securities branch in Korea.

4. The Applicant represents that the investment management businesses that operate out of the CS Affiliated QPAMs are separate businesses from CSAG and CSSEL. The CS Affiliated QPAMs have dedicated systems, management, risk and compliance officers and/or legal coverage. The management of plan assets is conducted separately from: (a) the non-investment management business activities of the Applicant, including the investment banking businesses; and (b) the conduct that is the subject of the CSSEL Plea Agreement (described below). The policies and procedures create information barriers designed to prevent employees of the CS Affiliated QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with the investment banking, treasury services or other investor services business activities. These policies and procedures apply to employees, officers, and

directors of the CS Affiliated QPAMs. The Applicant maintains an employee hotline for employees to express any concerns of wrongdoing anonymously.

5. CSAG also owns a five percent or more interest in certain other entities that may provide investment management services to plans but that are not affiliates of CSAG (the CS Related QPAMs). CSSEL, however, currently has no subsidiaries in which it has a five percent or more interest but which are not commonly controlled with CSAG and that are QPAMs within the meaning of PTE 2019-07.⁵

6. The CS Affiliated QPAMs' clients include plans subject to Part IV of Title I of ERISA and plans subject to Code section 4975, with respect to which the CS Affiliated QPAMs rely on PTE 84-14, or with respect to which the CS Affiliated QPAMs (or a CSG affiliate) have expressly represented that the managers qualify as a QPAM or rely on PTE 84-14.⁶ These plans are referred to collectively as Covered Plans throughout this Notice.

Relevant ERISA Provisions and PTE 84-14

7. The rules set forth in ERISA section 406 and Code section 4975(c)(1) proscribe certain "prohibited transactions" between plans and related parties with respect to those plans. Under ERISA, such parties are known as "parties in interest." ERISA section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.⁷

⁵ See the heading below regarding "Related Individual Exemptions" for a description of PTE 2019-07.

⁶ A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

⁷ Under the Code, such parties, or similar parties, are referred to as "disqualified persons."

8. The prohibited transaction provisions under ERISA section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.⁸ Under the authority of ERISA section 408(a) and Code section 4975(c)(2), the Department has the authority to grant exemptions from such “prohibited transactions” in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) if the Department finds an exemption is (i) administratively feasible, (ii) in the interests of the plan and of its participants and beneficiaries, and (iii) protective of the rights of participants and beneficiaries.

9. PTE 84-14 reflects the Department’s conclusion that it could provide broad relief from the prohibited transaction provisions of ERISA section 406(a) and Code section 4975(c)(1), in the circumstances set forth in that exemption, only if the commitments and the investments of plan assets, and the negotiations leading thereto, are the sole responsibility of an independent discretionary manager.

10. Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84-14, for itself and its client plans, if that entity or an “affiliate”⁹ or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the

⁸ The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA section 406(b) and Code section 4975(c)(1)(E) and (F). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries. PTE 84-14 provides only very narrow conditional relief for transactions described in ERISA section 406(b).

⁹ Section VI(d) of PTE 84-14 defines the term “affiliate” for purposes of Section I(g) as “(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.”

transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

11. The inclusion of Section I(g) in PTE 84-14 is, in part, based on an expectation that QPAMs will maintain a high standard of integrity. This expectation extends not only to the QPAM itself but also to those who may be in a position to influence the policies of the QPAM.

Prior 2014 Conviction of CSAG (the CSAG Conviction) and Related Exemptions

The CSAG Conviction

12. On May 19, 2014, the Tax Division of the United States Department of Justice (DOJ) and the U.S. Attorney's Office for the Eastern District of Virginia filed a one-count criminal information (the CSAG Information) in the District Court for the Eastern District of Virginia (the Virginia District Court) charging CSAG with a conspiracy to violate Code section 7206(2) in violation of Title 18, United States Code, Section 371. The CSAG Information identified the Applicant and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., of willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009.

13. According to the Statement of Facts filed in the criminal case (the CSAG Statement of Facts), for decades prior to and through approximately 2009, CSAG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts concealing their offshore assets and income from the IRS. Private bankers employed by CSAG (referred to as Relationship Managers or RMs) served as the primary contact for U.S. clients with undeclared accounts at CSAG. CSAG used a variety of means to assist

U.S. clients in concealing their undeclared accounts, including by: assisting clients in using sham entities as nominee beneficial owners of the undeclared accounts; soliciting IRS forms that falsely stated under penalty of perjury that the sham entities beneficially owned the assets in the accounts; failing to maintain records in the United States related to the accounts; destroying account records sent to the United States for client review; using Credit Suisse¹⁰ managers and employees as unregistered investment advisors on undeclared accounts; facilitating withdrawals of funds from undeclared accounts by either providing hand-delivered cash in the United States or using Credit Suisse's correspondent bank accounts in the United States; structuring transfers of funds to evade currency transaction reporting requirements; and providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

14. CSAG made a number of ineffectual attempts to consolidate these U.S. clients' accounts in CSAG business entities that complied with U.S. law. For instance, starting in or about 2009, CSAG engaged in a flawed process of verifying tax compliance of U.S. accounts in order to allow these accounts to remain at CSAG. In December 2010, the Tax Division of the U.S. Department of Justice (DOJ) informed Credit Suisse AG that it had begun a criminal investigation of CSAG that had uncovered evidence of tax law violations. Although CSAG had either transferred or terminated the majority of its relationships with these U.S. clients by approximately 2010, CSAG continued to identify U.S. customer accounts for closure until on or about 2013.

15. On May 19, 2014, pursuant to a plea agreement (the CSAG Plea Agreement), CSAG entered a plea of guilty for assisting U.S. citizens in federal income tax evasion. The conviction (the CSAG Conviction) occurred on November 21, 2014.

¹⁰ The CSAG Statement of Facts defined "Credit Suisse" to mean CSAG, its parent, and Switzerland-based subsidiaries and affiliates, including Clariden Leu.

Related Individual Exemptions

16. In connection with the CSAG Conviction, the Department first granted PTE 2014-11,¹¹ a one-year exemption, which allowed CS Affiliated and Related QPAMs to continue to rely on PTE 84-14, notwithstanding the CSAG Conviction, as long as a number of conditions were met. Subsequent to granting PTE 2014-11, the Department granted PTE 2015-14, an additional four-year exemption that continued to provide extended relief for CS Affiliated and Related QPAMs.¹² Before the expiration of PTE 2015-14, the Department granted PTE 2019-07, which would have provided the final five-years of relief needed in connection with the CSAG Conviction.¹³

Impending Conviction of CSSEL (the CSSEL Conviction) and CSG Deferred Prosecution Agreement (DPA)

The CSSEL Conviction

17. On October 19, 2021, the DOJ, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York (collectively, the Offices), filed a criminal information (the CSSEL Information) in the District Court for the Eastern District of New York (the New York District Court) charging CSSEL with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. 1349.

18. CSSEL agreed to resolve the action through a plea agreement presented to the New York District Court on October 19, 2021 (the CSSEL Plea Agreement). Under the CSSEL Plea Agreement, CSSEL agreed to enter a plea of guilty to the charge set out in the CSSEL Information (the CSSEL Plea). In addition, CSSEL will make an admission of guilt to the District Court. The Applicant expects that the District Court will enter a

¹¹ 79 FR 68716 (Nov. 18, 2014).

¹² 80 FR 59817 (Oct. 2, 2015).

¹³ See 84 FR 61928 (Nov. 14, 2019).

judgment against CSSEL that will require remedies that are materially the same as those set forth in the CSSEL Plea Agreement. On October 19, 2021, in connection with the CSSEL Plea, the ultimate parent of CSSEL, CSG, entered into a Deferred Prosecution Agreement (the DPA) with the Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section of the DOJ and the United States Attorney's Office for the Eastern District of New York.

19. For purposes of Section I(g) of PTE 84-14, the date CSSEL is sentenced will be the conviction date (the CSSEL Conviction Date). As of that date, absent this exemption, the CS Affiliated and Related QPAMs will no longer be able to rely on the relief provided by PTE 84-14 as of the CSSEL Conviction Date. The CSSEL Conviction will also violate PTE 2019-07 and therefore, absent this exemption, the CS Affiliated and Related QPAMs will no longer be able to rely on the relief provided by either PTE 84-14 or PTE 2019-07 as of the CSSEL Conviction Date.

20. According to the Statement of Facts (the CSSEL Statement of Facts)¹⁴ that accompanied the CSSEL Plea Agreement,¹⁵ CSSEL acted as a Joint Lead Manager underwriting the issuance of \$500 million in loan participation notes (LPNs) to partially finance an \$850 million loan for a tuna fishing project in Mozambique in 2013, and acted

¹⁴ Unless otherwise specified, all information in this section is taken from the Applicant's exemption application and supporting documents, the CSSEL Plea Agreement, and the CSSEL Statement of Facts. According to the CSSEL Plea Agreement "[t]he Defendant is pleading guilty because it is guilty of the charge contained in the Information. The Defendant admits, agrees, and stipulates that the factual allegations set forth in the Information and the Statement of Facts are true and correct, that it is responsible for the acts of its officers, directors, employees, and agents described in the Information and the Statement of Facts, and that the Information and the Statement of Facts accurately reflect the Defendant's criminal conduct." P. 11. Additionally, as part of the CSSEL Plea Agreement, the Defendant "expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Defendant make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Defendant set forth above or the facts described in the Information and the Statement of Facts." P. 23.

¹⁵ Plea Agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York and Credit Suisse Securities (Europe) Limited, Cr. No. 21-520 (MKB), filed Oct. 19, 2021.

as Joint Dealer Manager in the exchange of those LPNs for a sovereign bond (EMATUM¹⁶ Exchange) (collectively, the EMATUM Securities) in 2016.

21. CSSEL, through its employees, conspired to use U.S. wires and the U.S. financial system to defraud U.S. and international investors. Credit Suisse¹⁷ and its co-conspirators conspired to use international and interstate wires to, from, and through the United States to transmit false and misleading statements to investors in the EMATUM Securities, transfer proceeds obtained from those investors through the fraudulent scheme to the co-conspirators, and pay kickbacks to three former Credit Suisse bankers.

22. CSSEL, through Surjan Singh (Singh), who left Credit Suisse in 2017, and Andrew Pearse (Pearse) and Detelina Subeva (Subeva), who both left Credit Suisse in 2013, among other things, conspired to defraud investors and potential investors in the EMATUM Securities by concealing and misrepresenting the fact that approximately \$50 million in kickbacks were paid to Pearse, Singh, and Subeva from the loan proceeds of the EMATUM LPN transaction. Jean Boustani, an agent of Privinvest,¹⁸ an entity not affiliated with Credit Suisse, paid bribes totaling approximately \$150 million to various Mozambican government officials and others, including Manuel Chang, Mozambique's Minister of Finance, and Antonio do Rosario, an official in Mozambique's governmental state intelligence and security service, known as Servico de Informacoes e Seguranca do Estado, which, together with other Mozambican government agencies, was an owner of ProIndicus¹⁹ and EMATUM.

¹⁶ EMATUM was a company owned, controlled, and overseen by the Government of Mozambique. EMATUM was created to undertake a project to create a state-owned tuna fishing company for Mozambique.

¹⁷ The CSSEL Statement of facts defined "Credit Suisse" to mean CSG together with its wholly-owned subsidiaries and affiliated entities.

¹⁸ Privinvest was a holding company based in Abu Dhabi, United Arab Emirates. Privinvest was engaged in shipbuilding of various types of vessels.

¹⁹ ProIndicus was a company owned, controlled, and overseen by the Government of Mozambique. ProIndicus was created to undertake a project to create a state-owned coastal surveillance and protection plan for Mozambique.

23. Credit Suisse also arranged the EMATUM Exchange, whereby, in 2015, when EMATUM began encountering problems servicing the EMATUM loans, Credit Suisse arranged for the LPNs to be exchanged for Mozambique-issued Eurobonds. According to the Statement of Facts, in seeking investors' consent to the EMATUM Exchange, CSSEL prepared documents about the EMATUM Exchange that were sent to investors and included false and misleading statements regarding the use of proceeds of the original EMATUM loan and omitted certain other facts concerning the EMATUM Exchange. Credit Suisse ignored or only nominally addressed a number of red flags in connection with these transactions.

24. On or about August 30, 2013, Credit Suisse agreed to move forward with the EMATUM transaction. In addition to Credit Risk Management, the European Investment Banking Committee, Reputational Risk, and the Compliance and Anti-Money Laundering functions considered the transaction, and agreed to allow the EMATUM transaction to go forward. The CSSEL Statement of Facts indicates that after Credit Suisse transferred the funds raised to finance EMATUM to Privinvest, Privinvest secretly paid millions of dollars to three of the signatories on the EMATUM deal—Singh, Do Rosario, and Chang.

25. Credit Suisse approved the EMATUM loan notwithstanding the fact that its earlier due diligence process for ProIndicus had identified significant risks of bribery and the size of the project had expanded greatly without apparent justification, and Credit Suisse, through Pearse, Singh, and Subeva, knew that Privinvest had paid kickbacks to Pearse in connection with the ProIndicus transaction, and would pay further kickbacks to Pearse and Singh in connection with the EMATUM loan.

26. Credit Suisse sent potential investors materials that included the EMATUM loan agreement and marketing materials such as the offering circular (the LPN Investor Documents), notwithstanding the fact that the LPN Investor Documents represented that

the loan proceeds would be used exclusively to fund the EMATUM project, and that none of the proceeds would be used to pay bribes or kickbacks. For example, (a) Pearce and Singh knew that they would receive millions of dollars in illegal kickback payments from Privinvest in connection with the EMATUM loan while employed by Credit Suisse; (b) Firm 1 had expressly warned Credit Suisse about Privinvest and Privinvest Co-Conspirator 1's history of corruption and bribery; and (c) a senior Credit Suisse executive had previously said "no" to Pearce to the combination of Privinvest Co-Conspirator 1 and Mozambique in November 2012.²⁰

27. Despite the use of proceeds concerns raised by the significant valuation shortfall and other previously identified red flags, which underscored the risk that the EMATUM proceeds had been used for corruption and bribery, Credit Suisse approved the EMATUM Exchange. Although Credit Suisse did disclose in investor documents that it had been "widely reported in the press that the proceeds of the [LPNs] had been used in part to purchase defense equipment," and that "subsequent press reports [had] also called into question whether all of the proceeds of the [LPNs] were used for authorized or appropriate purposes," Credit Suisse did not disclose any of the information it had about the significant shortfall between the price Privinvest charged EMATUM for the purchase of assets and the value of those assets. In the EMATUM Exchange documentation, Credit Suisse also: (a) included false and misleading statements regarding the use of proceeds of the original EMATUM loans; (b) failed to disclose kickbacks to Singh, Pearce, and Subeva, of which Singh was aware; (c) did not disclose any of the information Credit Suisse had about the significant shortfall between the price Privinvest charged EMATUM for the 27 boats and the fair market value of those boats; and (d)

²⁰ The CSSEL Statement of Facts did not identify Privinvest Co-conspirator 1 or Firm 1 other than that Firm 1 was a "diligence firm" used by Credit Suisse.

failed to disclose the existence of the ProIndicus and MAM loans,²¹ and their maturity dates, and instead disclosed that Credit Suisse and VTB Bank “have engaged, and may in the future engage, in investment banking and/or commercial banking transactions with, and have performed and continue to perform services for the Issuer and its affiliates in the ordinary course of business for which they have received and for which they will in the future receive, fees. ... In particular, an affiliate of [CSSEL] has a lending relationship with a wholly-owned state entity whose obligations have the benefit of a guarantee from Mozambique.” Credit Suisse did disclose, however, that it had been “widely reported in the press that the proceeds of the [LPNs] had been used in part to purchase defense equipment,” and that “subsequent press reports [had] also called into question whether all of the proceeds of the [LPNs] were used for authorized or appropriate purposes.”

28. By agreeing to the EMATUM Exchange, which delayed the EMATUM loan repayment date, Credit Suisse knew that EMATUM loan participation note investors were agreeing to be paid after any other investors in other Mozambique government loans that matured earlier, such as ProIndicus. Credit Suisse arranged and was an investor in the ProIndicus loan. As a result, by extending the EMATUM loan repayment date through the EMATUM Exchange, Credit Suisse would be repaid on its investment in the private ProIndicus loan before EMATUM Securities investors were repaid.

29. During the investor road show for the EMATUM Exchange, Credit Suisse and Do Rosario and the then-Minister of Finance for Mozambique did not inform investors of (a) the significant valuation shortfall and risk that loan proceeds were improperly diverted, including to pay bribes; (b) the existence or maturity dates of the ProIndicus and MAM loans; (c) that Mozambique had not disclosed its true level of debt to the

²¹ MAM was a company owned, controlled, and overseen by the Government of Mozambique. MAM was created to build and maintain shipyards.

ProIndicus and MAM loans to the International Monetary Fund (IMF); and (d) kickbacks paid to Credit Suisse bankers in connection with the EMATUM loan.

30. Under the CSSEL Plea Agreement, CSSEL agreed, among other things, as follows: First, that CSSEL shall cooperate fully with the Offices in any and all matters relating to the conduct described in the CSSEL Plea Agreement and the CSSEL Statement of Facts and other conduct under investigation by the Offices or any other component of the Department of Justice at any time during the term of the DPA (the Term) until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded or the end of the Term. Second, at the request of the Offices, CSSEL shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks in any investigation of CSSEL, CSG, its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in the CSSEL Plea Agreement and the CSSEL Statement of Facts and any other conduct under investigation by the Offices or any other component of the DOJ. Third, should CSSEL learn during the Term of any evidence or allegations of conduct that may constitute a violation of the federal wire fraud statute had the conduct occurred within the jurisdiction of the United States, CSSEL shall promptly report such evidence or allegation to the Offices. CSSEL also agreed to commit no further crimes and to work with Credit Suisse in fulfilling the obligations of CSG's DPA.

Impacted Investors

31. The Applicant represented to the Department that the LPNs were distributed from Credit Suisse's UK operations via CSSEL into international capital markets in 2013, to non-U.S. entities, pursuant to U.S. Securities and Exchange Commission (SEC)

Regulation S. Credit Suisse is aware that the purchasers of those LPNs were made up of hedge funds, banks, and other institutions, but due to Regulation S, the purchasers' only obligation was to certify their status as Qualified Institutional Buyers (QIBs) in the applicable subscription agreements. The Applicant represents that it is unlikely that Covered Plans were initial purchasers of those LPNs. According to the Applicant, Credit Suisse has no way of knowing, and does not know in any systematic manner, whether (a) the fund owners or investors in the initial purchasers' funds themselves were Covered Plans, or (b) parties buying and selling the LPNs in the secondary market were Covered Plans.

32. Furthermore, the Applicant represented that in 2016, LPN investors had the option to exchange their LPNs for sovereign-issued Mozambique Exchange Bonds (the Exchange Bonds) issued under either Regulation S or SEC Rule 144A, in London, England. Credit Suisse represents that it is unlikely that those investors who chose to exchange their LPNs for Regulation S bonds, and who must have been QIBs and non-U.S. entities, were Covered Plans. The 2016 Exchange also included a Rule 144A tranche into which investors could exchange their LPNs; however, those buyers also were required to represent that they were QIBs, and as a result, it is unlikely that their clients were Covered Plans. According to the information on purchasers which Credit Suisse does have, at the time of the Exchange, Credit Suisse was aware that the LPNs, and subsequently, the Eurobonds, were held via either Euroclear or Clearstream accounts in Europe. While Credit Suisse has identified a list of the entities that maintained custodial accounts at Euroclear and Clearstream in connection with those transactions, Credit Suisse represents that it has no way of knowing the identities of the ultimate beneficial owners of the LPNs at the time of the Exchange.

33. To the extent that any investor believes that it has suffered losses in connection with the LPNs or the 2016 Exchange Bonds, Credit Suisse's resolutions with

the SEC and DOJ provide those potentially damaged investors with two potential avenues through which to receive compensation, should they be able to support their claims with sufficient evidence. First, the SEC may set up a “fair fund” in connection with this matter pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, which would provide up to \$65,000,000 (the civil penalty amounts levied in the underlying SEC settlement with Credit Suisse in connection with this matter) to compensate any investor able to prove losses to the SEC. Second, in connection with the CSSEL Plea, the Mandatory Victim Restitution Act (MVRA) requires the DOJ to contact potentially harmed investors, apprise them of their right to compensation from CSSEL if they are able to prove the charged conduct was the proximate cause of the harm suffered, and for Credit Suisse to provide that compensation pursuant to a judicially-administered process. To the extent that investors claim monetary damages in excess of those amounts provided for in any SEC Fair Fund, Credit Suisse and the DOJ have agreed to a methodology for determining investor eligibility and calculating eligible investor losses, which will be subject to ratification by the court presiding over CSSEL’s sentencing hearing, which currently is scheduled for early March 2022. Credit Suisse does not currently know which, if any, potentially impacted investors might file claims on the SEC Fair Fund or MVRA restitution mechanism.

Department’s Note: The Department is particularly interested in receiving comments from retirement plans or retirement accounts (including Covered Plans but not limited to retirement plans or retirement accounts that are subject to ERISA or the Code) that believe they were impacted by the conduct described above that forms the basis for the CSSEL Conviction along with the dollar amount of harm incurred. The Department is also interested in receiving comments on whether the remedies under the MVRA restitution mechanism or offered through the SEC Fair Fund are adequate to fully

compensate retirement plans and retirement accounts that suffered losses. To the extent that retirement plans and retirement accounts are not made whole, the Department seeks comment on the extent of losses that would remain uncompensated.

The CSG DPA

34. On October 19, 2021, in addition to the CSSEL Plea, the ultimate parent entity of CSSEL, CSG, entered into a three-year DPA with the Offices in connection with the same conduct as set forth in the CSSEL Statement of Facts that forms the basis for the CSSEL Plea Agreement.

35. The DPA indicates that CSG admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the CSSEL Information, and as set forth in the CSSEL Statement of Facts, and that the allegations described in the CSSEL Information and the facts described in the CSSEL Statement of Facts are true and accurate.

36. Under the DPA, CSG also agreed to continue to cooperate with the Offices, to enhance its compliance program and internal controls, and to provide enhanced reporting to the Offices on CSG's remediation and compliance program. Among other things, the enhanced reporting provisions require CSG to meet with the Offices at least quarterly and to submit yearly reports regarding the status of its remediation efforts, the results of its testing of its compliance program, and its proposals to ensure that its compliance program is reasonably designed, implemented, and enforced so that it is effective in deterring and detecting violations of fraud, money laundering, the Foreign Corrupt Practices Act, and other applicable anti-corruption laws.

Department's Note: Interested persons can access the CSG DPA and related materials at <https://www.justice.gov/opa/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global>.

Current Exemption Request

37. On October 19, 2021, the Applicant filed an exemption application with the Department for Credit Suisse Affiliated QPAMs and Credit Suisse Related QPAMs to continue to rely on PTE 84-14, notwithstanding the criminal sentencing of CSSEL, which is tentatively scheduled for March 9, 2022. The Applicant represents that the exemption will enable the affected Covered Plans to continue their current investment strategy with their current investment manager or trustee without disruption. According to the Applicant, if the Department denies the requested exemption, plans would incur significant costs if they decide to find other asset managers. The Applicant states that many of the assets in the accounts could be difficult to transition, and the interruption of certain investment strategies, such as stable value, could create significant disruption for Covered Plans that are 401(k) plans and their participants and beneficiaries.

38. The Applicant represents that ineligibility from PTE 84-14 would result in hardship to plans (and their participants and beneficiaries) and that neither the protection of plans and participants nor the public interest would be served by permitting Section I(g) ineligibility to apply to the CS Affiliated QPAMs. According to the Applicant, ineligibility would deprive client plans of the investment management services (some of which are highly specialized) that these plans expected to receive when they appointed these managers, and could result in the termination of relationships that the fiduciaries of the plans have determined to be in the best interests of the plans. The Applicant goes on to represent that it would be disruptive and expensive to cause plan fiduciaries to reconsider their arrangements with their chosen investment manager because of

uncertainties relating to PTE 84-14. This uncertainty, according to the Applicant, could disrupt certain investment strategies and result in significant redemptions from pooled funds, which would frustrate efforts to effectively manage the pooled funds' assets, harm remaining plan investors, and increase the expense ratios of the investment funds.

Department's Note: The Department specifically seeks comments from ERISA-covered plans and IRAs, as well as the Applicant, on the validity and magnitude of the costs and harms to Covered Plans as identified by the Applicant. In this regard, the Department also strongly emphasizes that a fiduciary's duties of prudence and loyalty under ERISA section 404 apply in the context of hiring, monitoring, evaluating, and retaining an asset manager, regardless of whether the asset manager retains the ability to continue relying on PTE 84-14 under a supplemental individual exemption. A fiduciary's failure to abide by these duties may give rise to fiduciary liability, including co-fiduciary liability or personal liability.²²

39. The Applicant further represents that, with respect to many Covered Plans, virtually every counterparty may be a service provider to that plan. Transactions between the Covered Plan and the party-in-interest service provider would be prohibited under one or more provisions of ERISA section 406, absent an exemption. The Applicant states that because counterparties are familiar and comfortable with PTE 84-14 for a wide variety of transactions, it is generally the most commonly used prohibited transaction exemption, and the exemption generally relied on by counterparties as the "backup" exemption for all transactions. Counterparties may provide less advantageous pricing or may not bid at all where the plan's investment manager is not a QPAM. Various strategies in which plans and IRAs are managed may depend significantly on PTE 84-14, including but not limited to stable value, leveraged loans, domestic and international

²² See ERISA sections 404, 405, and 409.

fixed income and equities, and strategies that use structured products, options, swaps, and derivatives.

Department's Note: The Department specifically requests comments from ERISA-covered plans and IRAs as to the specific costs or harms, if any, that would flow from denial of the exemption, including evidence as to any valuable investment opportunities that they would have to forego, and the basis for concluding that those investments would be available to plans and IRAs on less advantageous terms.

Applicant's Request for an Exemption with a Ten-Year Duration.

40. In its exemption request, the Applicant sought a ten-year exemption term. However, given the magnitude, gravity, duration and pervasiveness of Credit Suisse's misconduct, along with numerous Credit Suisse compliance control failures associated with both the CSAG and the CSSEL misconduct, the Department is unable to determine that a ten-year exemption would be in the interest of, and protective of, the Covered Plans. Therefore, the relief described in this proposed exemption is limited to one year. If the Applicant seeks additional exemptive relief, it must submit a new exemption application request before the end of the exemption's one-year term, assuming this proposed exemption is ultimately granted. At that time, the Department will review the application and other information it deems necessary to determine whether additional relief is warranted. No inference regarding whether the Department will grant additional relief should be drawn from the Department's decision to propose this one-year exemption.

41. The Department is particularly interested in comments from interested persons, including the Applicant, regarding whether any additional relief should be limited to an individual exemption that permits the types of transactions permitted by

PTE 84-14, but that does not otherwise allow Credit Suisse asset managers to refer to themselves as QPAMs under PTE 84-14, with respect to Covered Plans that become clients following the CSSEL Conviction Date.

Department's Note: The Department specifically requests comment from interested persons regarding any other investigations or misconduct (including any alleged misconduct) that Credit Suisse is a party to which may result in criminal prosecution.

The Exemption's Protective Conditions

42. In developing administrative exemptions under ERISA section 408(a), the Department implements its statutory directive to grant only exemptions that are appropriately protective of, and in the interest of, affected plans and IRAs. The Department is proposing this exemption with a number of protective conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to utilize the services of the CS Affiliated and Related QPAMs. If this proposed exemption is granted as proposed, it would allow Covered Plans to avoid the costs and disruption to investment strategies that may arise if such plans and IRAs are forced, on short notice, to hire a different QPAM or asset manager because the CS Affiliated and Related QPAMs are no longer able to rely on the relief provided by PTE 84-14 and PTE 2019-07 due to the CSSEL Conviction. Covered Plan fiduciaries are cautioned that the Department's decision to propose this exemption should not be taken, in any way, as an indication that Credit Suisse asset managers will receive additional exemptive relief

43. It is a material condition of this exemption that the CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSG, CSAG, and CSSEL, employees of such QPAMs, and CSAG employees that do work for CS Affiliated or Related QPAMs) did not know or have reason to know of, and did not

participate in the criminal conduct of CSAG and CSSEL that is the subject of either the CSAG or CSSEL Conviction. Further, any other party engaged on behalf of the CS Affiliated QPAMs and CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of, and did not participate in the criminal conduct that is the subject of either the CSAG or CSSEL Conviction.

44. The protective conditions in this proposed exemption include a requirement that the CS Affiliated QPAMs do not currently and may not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct of CSAG or CSSEL that is the subject of the CSAG or CSSEL Conviction.

45. This proposed exemption requires that no CS Affiliated QPAM may use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code to enter into any transaction with CSAG or CSSEL, or to engage CSAG or CSSEL to provide any service to such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, neither CSAG nor CSSEL may act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

46. Each CS Affiliated QPAM must continue to maintain, adjust to the extent necessary, implement, and follow written policies and procedures (the Policies) that are reasonably designed to ensure: (a) that the asset management decisions of the CS Affiliated QPAMs are conducted independently of CSAG and CSSEL's corporate management and business activities; (b) that the CS Affiliated QPAMs fully comply with ERISA's fiduciary duties and with ERISA's and the Code's prohibited transaction

provisions; (c) that the CS Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; (d) that any filings or statements made by the CS Affiliated QPAMs to regulators on behalf of, or in relation to, Covered Plans are materially accurate and complete; (e) that the CS Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with such regulators, or in their communications with Covered Plans; and (f) that the CS Affiliated QPAMs comply with the terms of the exemption.

47. This proposed exemption requires each CS Affiliated QPAM to maintain, adjust to the extent necessary, and implement a program of training (the Training), to be conducted at least annually, for all relevant asset/portfolio management, trading, legal, compliance, and internal audit personnel. This required Training must, at a minimum, cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions described in this proposal, and the requirement for prompt reporting of wrongdoing.

48. This proposed exemption requires that each CS Affiliated QPAM submit to an audit, conducted by an independent auditor, to evaluate the adequacy of and compliance with, the Policies and Training required by the exemption, as described below. The independent auditor must be prudently selected and have appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by the exemption. The CS Affiliated QPAMs must grant the auditor unconditional access to their business, and the auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training.

49. The independent auditor must issue a written audit report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies, that describes the procedures performed by the auditor in connection with its examination. Further, the CS Affiliated QPAMs must promptly address any identified noncompliance, and must

promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations, if any, with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. The Audit Report must also be provided to the Department and will be made a part of the public record regarding this one-year exemption.

50. This proposed exemption further requires the General Counsel, or one of the three most senior executive officers of the CS Affiliated QPAM to which the Audit Report applies, to certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and the exemption, and that the CS Affiliated QPAM has addressed, corrected, and remedied (or has an appropriate written plan to address) any identified instance of noncompliance or inadequacy regarding the Policies and Training identified in the Audit Report.

51. With respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan, this proposal requires the CS Affiliated QPAMs to agree and warrant: (a) to comply with ERISA and the Code, including the standards of prudence and loyalty set forth in ERISA section 404; (b) to refrain from engaging in prohibited transactions that are not otherwise exempt; (c) to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from, among other things, the CS Affiliated QPAM's violation of ERISA's fiduciary duties; (d) with narrow exceptions, to not restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM; (e) with narrow exceptions, to not impose any fees, penalties, or charges for such termination or withdrawal; and (f) to not include exculpatory provisions disclaiming or otherwise limiting the liability of the CS Affiliated QPAM for a violation of such agreement's terms.

52. Each CS Affiliated QPAM must provide a notice of its obligations under this exemption to each Covered Plan. Each CS Affiliated QPAM also must provide to each sponsor and beneficial owner of a Covered Plan a copy of the notice of the exemption as published in the Federal Register, a separate summary describing the facts that led to the CSAG and CSSEL Conviction (the Summary), and a prominently displayed statement (the Statement) that the CSAG and CSSEL Conviction each results in a failure to meet a condition in PTE 84-14 and that the CSSEL Conviction results in a failure to meet a condition in PTE 2019-07.

53. This proposed exemption requires each CS Affiliated QPAM, consistent with PTE 2019-07 to maintain a designated senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described in this proposed exemption. The Compliance Officer must conduct a review, for the twelve-month period that begins on November 21, 2021 (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training, and issue a written report (the Exemption Report) on the findings.

54. This proposal requires Credit Suisse to impose internal procedures, controls, and protocols on CSAG and CSSEL to reduce the likelihood of any recurrence of conduct that is the subject of the CSAG and CSSEL Convictions.

Statutory Findings

55. ERISA section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. These criteria are discussed below.

56. *“Administratively Feasible.”* The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering each CS Affiliated QPAM's compliance with the terms of the exemption, and a corresponding written audit report will be provided to the Department and be made available to the public. The independent audit will provide an incentive for compliance while reducing the immediate need for review and oversight by the Department.

57. *“In the interest of.”* The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of affected Covered Plans. It is the Department's understanding, based on representations from the Applicant, that if the requested exemption is denied, Covered Plans may be forced to find other managers, at significant costs to the Covered Plans. According to the Applicant, ineligibility under Section I(g) of PTE 84-14 would deprive the Covered Plans of the investment management services that these plans expected to receive when they appointed these managers, and could result in the termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans.

58. *“Protective of.”* The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of affected Covered Plans. As described above, the proposed exemption is subject to a suite of conditions including but not limited to: (a) the development and maintenance of the Policies; (b) the implementation of the Training; (c) a robust audit conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of the CS Affiliated QPAMs; (e) specific notices and disclosures concerning the circumstances necessitating the need for exemptive relief and the CS Affiliated QPAMs' obligations under this proposed exemption; and (f) the designation of a Compliance Officer with responsibility to ensure compliance with the Policies and Training

requirements under this proposed exemption, and the Compliance Officer's completion of an Exemption Review and corresponding Exemption Report. Further, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct.

Summary

59. This proposed one-year exemption provides relief from certain of the restrictions set forth in ERISA section 406 and Code Section 4975(c)(1). No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed one-year exemption would terminate immediately if, among other things, an entity within the CSAG corporate structure is convicted of any crime covered by Section I(g) of PTE 84-14 (other than the CSAG Conviction or the CSSEL Conviction). While such an entity could request a new exemption in that event, the Department is not obligated to grant the request. Consistent with this proposed exemption, the Department's consideration of additional exemptive relief is subject to the findings required under ERISA section 408(a) and Code section 4975(c)(2).

60. When interpreting and implementing this exemption, the Applicant and the CS Affiliated QPAMs should resolve any ambiguities in light of the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations, at 202-693-8540.

61. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would

satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c)(2).

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be provided to all interested persons within ten (10) days of the publication of the notice of proposed one-year exemption in the Federal Register. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty (40) days of the date of publication of this proposed one-year exemption in the Federal Register. All comments will be made available to the public.

Warning:

If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

PROPOSED EXEMPTION

The Department is considering granting a one-year exemption under the authority of ERISA section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in

accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).²³ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

SECTION I. DEFINITIONS

(a) The term “Convictions” means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014 (the CSAG Conviction); and (2) the judgment of conviction against CSSEL, when it is entered, in Case Number 1:21-cr-00520-WFK (the CSSEL Conviction).

(b) The term “Covered Plan” means a plan subject to Part IV of Title I of ERISA (an “ERISA-covered plan”) or a plan subject to Code section 4975 (an “IRA”), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84-14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term “CSAG” means Credit Suisse AG.

(d) The term “CSSEL” means Credit Suisse Securities (Europe) Limited.

²³ For purposes of this proposed one-year exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

(e) The term “CS Affiliated QPAM” means Credit Suisse Asset Management, LLC (CSAM LLC) and Credit Suisse Asset Management Limited (CSAM Ltd.) and any current or future "affiliate" of CSAG or CSSEL (as defined in Part VI(d) of PTE 84–14) that qualifies as a “qualified professional asset manager” (as defined in Section VI(a) of PTE 84-14)²⁴ and that relies on the relief provided by PTE 84-14 and with respect to which CSAG or CSSEL is a current or future “affiliate” (as defined in Section VI(d) of PTE 84-14), but is not a CS Related QPAM. The term “CS Affiliated QPAM” excludes CSAG and CSSEL.

(f) The term “CS Related QPAM” means any current or future “qualified professional asset manager” (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which CSAG or CSSEL owns a direct or indirect five (5) percent or more interest, but with respect to which CSAG or CSSEL is not an “affiliate” (as defined in section VI(d)(1) of PTE 84-14) The term “CS Related QPAM” excludes CSAG and CSSEL.

(g) The term “Exemption Period” means the one-year period that begins on the date of the CSSEL Conviction.

(h) The term “CSAG Plea Agreement” means the plea agreement entered into between the United States of America, by and through the United States Department of Justice, and the United States Attorney's Office for the Eastern District of Virginia, and CSSEL in Case Number 1:14-cr-188-RBS.

(i) The term “CSSEL Plea Agreement” means the plea agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section and Fraud

²⁴ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

Section, and the United States Attorney's Office for the Eastern District of New York, and CSSEL in Case Number 1:21-cr-00520-WFK.

SECTION II. COVERED TRANSACTIONS

If this proposed exemption is granted, the CS Affiliated QPAMs, as defined in Section I(d), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14)²⁵ during the Exemption Period, notwithstanding the “Convictions” against CSAG and CSSEL (as defined in Section I(a)), provided that the conditions in Section III are satisfied.

SECTION III. CONDITIONS

(a) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSG, CSAG, and CSSEL, employees of such QPAMs, and CSAG employees that do work for CS Affiliated or Related QPAMs described in subparagraph (d) below) did not know or did not have reason to know of, and did not participate in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions. Further, any other party engaged on behalf of the CS Affiliated QPAMs and CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of, and did not participate in the criminal conduct that is the subject of the Convictions. For purposes of this exemption, including paragraph (c) below, “participate in” refers not only to active participation in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions, but also to knowing approval of the criminal conduct, or knowledge of such

²⁵ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

conduct without taking active steps to prohibit such conduct, including reporting the conduct to the individual's supervisors, and to the Board of Directors.

(b) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d)(3) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions. Further, any other party engaged on behalf of the CS Affiliated QPAMs and the CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the subject of the Convictions;

(c) The CS Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions;

(d) At all times during the Exemption Period, no CS Affiliated QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such CS Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with CSAG or CSSEL or to engage CSAG or CSSEL to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. A CS Affiliated QPAM will not fail this condition solely because:

(1) A CSAG affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a CS Affiliated QPAM or CS Related QPAM;

(2) CSAG provides only necessary, non-investment, non-fiduciary services that support the operations of CS Affiliated QPAMs, at the CS Affiliated QPAM's own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment fund managed by a CS Affiliated QPAM or CS Related QPAM; or

(3) CSAG employees are double-hatted, seconded, supervised, or subject to the control of a CS Affiliated QPAM;

(e) Any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions;

(f) A CS Affiliated QPAM or a CS Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code section 4975 (an IRA) in a manner that it knew or should have known would further the criminal conduct that is the subject of the Convictions; or cause the CS Affiliated QPAM or CS Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Convictions;

(g) Neither CSAG nor CSSEL will act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. Neither CSAG nor CSSEL will be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (the Policies).

Notwithstanding the preceding sentence, a CS Affiliated QPAM may not engage in any transaction or arrangement described in Section III(d)(1) through (3) of this exemption before the date the Policies below have been developed, implemented, and followed. The Policies must require and must be reasonably designed to ensure that:

(i) The asset management decisions of the CS Affiliated QPAM are conducted independently of CSAG's and CSSEL's corporate management and business activities, and without considering any fee a CS-related local sub-custodian may receive from those decisions. This condition does not preclude a CS Affiliated QPAM from receiving publicly available research and other widely available information from a CSAG affiliate other than CSSEL;

(ii) The CS Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The CS Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the CS Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of its knowledge at that time, the CS Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The CS Affiliated QPAM complies with the terms of this one-year exemption, and CSAG complies with the terms of Section III(d)(2);

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant CS Affiliated QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the CS Affiliated QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training), to be conducted at least annually, for all relevant CS Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and

(iii) Be conducted in-person, electronically, or via a website;

(i)(1) Each CS Affiliated QPAM submits to an audit by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each CS Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the 12-month period that begins on November 21, 2021. The audit must be completed no later than 180 days after the period to which it applies (May 19, 2023);

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard,

the auditor must test, for each CS Affiliated QPAM, a sample of such: (1) CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAG affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a reasonable basis to determine such CS Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each CS Affiliated QPAM's Policies and Training; each CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The CS Affiliated QPAM must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether

the plan was satisfactorily completed. Any determination by the auditor that a CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report created by the Compliance Officer, as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(m);

(6) The auditor must notify the respective CS Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the CS Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, the CS Affiliated QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. This certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and

the Code. Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAGE or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct;

(8) A copy of the Audit Report must be provided CSAG's Board of Directors and either the Risk Committee or the Audit Committee of CSAG's Board of Directors; and a senior executive officer at either the Risk Committee or the Conduct and Financial Crime Control Committee must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each CS Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001-2109. The delivery must take place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this one-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access, inspection, and review is otherwise permitted by law; and

(12) CSAG and/or the CS Affiliated QPAM must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes involving the terminated auditor and CSAG and/or the CS Affiliated QPAMs;

(j) As of the effective date of this one-year exemption, with respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan, CS Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by a CS Affiliated QPAM; or any claim arising out of the failure of such CS Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Convictions. This condition applies only to actual losses caused by the CS Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the CS Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA and managed by such CS Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of such agreement's terms. To the extent consistent with ERISA section 410, however, this provision does not prohibit

disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of CSAG and its affiliates, or damages arising from acts outside the control of the CS Affiliated QPAM; and

(7) Within 120 days after the effective date of this one-year exemption, each CS Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a CS Affiliated QPAM on or after a date that is 120 days after the effective date of this exemption, the CS Affiliated QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the CS Affiliated QPAM and such clients or other written contractual agreement. Notwithstanding the above, a CS Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For Covered Plans that were provided a previous form of investment management agreement prior to the effective date of this exemption, and sign and return such agreement with a CS Affiliated QPAM within 120 days after the effective date of this exemption, the CS Affiliated QPAM shall provide the documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2019-07 that meets the terms of this condition.

(k) Within 60 days after the effective date of this one-year exemption, each CS Affiliated QPAM provides notice of the exemption as published in the Federal Register, along with a separate summary describing the facts that led to the Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84-14 and the CSSEL Conviction results in a failure to meet a condition in PTE

2019-07, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a CS Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the CS Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the one-year exemption).

(l) The CS Affiliated QPAM must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Convictions. If, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Convictions), relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, each CS Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a CS Affiliated QPAM may designate its own Compliance Officer(s).

Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented

steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest ranking corporate officer in charge of compliance for the applicable CS Affiliated QPAM.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Annual Exemption Review includes a review of the CS Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2019-07; any material change in the relevant business activities of the CS Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the CS Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or

additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the CS Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of CSAG and to each CS Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of CSAG and the relevant CS Affiliated QPAM; and the report must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Annual Exemption Report, must cover the twelve month period beginning on November 21, 2021. The Annual Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates;

(n) CSAG imposes its internal procedures, controls, and protocols on CSAG and CSSEL to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(o) CSAG complies in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Convictions;

(p) Each CS Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the CS Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, CSAG must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Credit Suisse Group AG or CSAG or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, each CS Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the CS Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.²⁶ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A CS Affiliated QPAM will not fail to meet the terms of this one-year exemption solely because a different CS Affiliated QPAM fails to satisfy a condition for

²⁶ If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (p) or (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of CSAG or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: This exemption will be in effect for one (1) year, beginning on the date of the CSSEL Conviction.

George Christopher Cosby,
Acting Director,
Office of Exemption Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.